

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

PERRY DAVIS,

Petitioner,

v.

LLOYD RAPELJE,

Respondent.

CASE NO. 2:09-CV-10560
HONORABLE DENISE PAGE HOOD
UNITED STATES DISTRICT JUDGE

OPINION & ORDER DENYING CERTIFICATE OF APPEALABILITY

Petitioner filed a habeas corpus petition pursuant to 28 U.S.C. §2254. On September 28, 2010, the Court granted Respondent's motion for summary judgment and denied the petition because it was filed after expiration of the statute of limitations set forth in 28 U.S.C. § 2244(d). Petitioner has filed a notice of appeal.

Pursuant to Rule 11 of the Rules Governing Section 2254 Proceedings, which was amended as of December 1, 2009:

The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. . . . If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, a party may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22.

Rule 11, Rules Governing Section 2254 Proceedings.

28 U.S.C. § 2253(c)(1)(A) and F.R.A.P. 22(b) state that an appeal from the district court's denial of a writ of habeas corpus may not be taken unless a certificate of appealability (COA) is issued either by a circuit court or district court judge. If an appeal is taken by an applicant for a writ

of habeas corpus, the district court judge shall either issue a certificate of appealability or state the reasons why a certificate of appealability shall not issue. F.R.A.P. 22(b). To obtain a certificate of appealability, a prisoner must make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2).

When a habeas petition is denied on a procedural ground, a certificate of appealability may issue only if "jurists of reason would find it debatable whether the petitioner states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). In the present case, for reasons stated in greater detail in the opinion and order granting Respondent's motion for summary judgment, this Court found that petitioner's application for a writ of habeas corpus was filed untimely. The Court will deny petitioner a certificate of appealability, because reasonable jurists would not find it debatable whether this Court was correct in determining that the petition should be dismissed as time barred..

Accordingly, it is **ORDERED** that a certificate of appealability is denied.

Dated: December 21, 2011

s/Denise Page Hood

Denise Page Hood
United States District Judge

I hereby certify that a copy of the foregoing document was served upon counsel of record on December 21, 2011, by electronic and/or ordinary mail.

s/LaShawn R. Saulsberry

Case Manager